

105 FERC ¶ 61,186  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Commonwealth Edison Company  
Commonwealth Edison Company of Indiana, Inc.

Docket No. ER03-1335-000

ORDER CONDITIONALLY ACCEPTING FOR FILING AND SUSPENDING  
PROPOSED RATES, SUBJECT TO REFUND, AND ESTABLISHING HEARING  
AND SETTLEMENT JUDGE PROCEDURES

(Issued November 10, 2003)

1. On September 12, 2003, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd) filed proposed transmission service rates and ancillary service rates for scheduling, system control and dispatch service. For the reasons discussed below, the Commission will conditionally accept and suspend the rates, make them subject to refund, and institute hearing and settlement judge procedures. This order benefits customers by ensuring just and reasonable rates while encouraging transmission growth and enhanced reliability in congested areas of the grid.

**Background**

2. ComEd states that it is in the process of joining PJM Interconnection, L.L.C., (PJM). It explains that on April 1, 2003, the Commission accepted ComEd's filing made in conjunction with American Electric Power Service Corporation and Dayton Power and Light Company (collectively, the New PJM Companies) transferring functional control of ComEd's transmission facilities to PJM, and for PJM to provide transmission service over these facilities. It adds that the Commission suspended the rates for a nominal period, made them subject to refund, and set them for hearing, but held the hearing in abeyance pending settlement judge procedures, which are continuing in Docket No. ER03-262-000.<sup>1</sup>

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<sup>1</sup>American Electric Power Service Corp., *et al.*, 103 FERC ¶ 61,008 (2003) (April Order). ComEd states that the Commission accepted the rates to become effective upon the date of the transfer of functional control of ComEd's transmission facilities to PJM.

### **ComEd's Filing**

3. ComEd proposes transmission rates and ancillary services rates for scheduling, system control and dispatch service to be made effective in two stages. ComEd proposes that the rates in the first stage become effective on November 1, 2003,<sup>2</sup> under ComEd's current Open Access Transmission Tariff (OATT) (Phase I rates) and the rates in the second stage become effective for the ComEd pricing zone under the PJM OATT effective upon the date that ComEd transfers functional control of its transmission facilities to PJM and concurrently is integrated into the PJM market (Phase II rates).<sup>3</sup>

4. ComEd states that the proposed rates are supported by an increase in ComEd's transmission cost-of-service since its last transmission rate case that reflects capital investments made by ComEd to facilitate system reliability and wholesale development. ComEd states that the proposed rates reflect growth in transmission system loads, an increase in gross transmission plant, and a corresponding increase in expenses associated with the new plant. ComEd explains that this is not a filing to recover lost revenues that would result from a possible Commission determination in Docket No. EL03-212-000 to eliminate the ComEd point-to-point transmission service rate for service through or out of the ComEd transmission system and sinking within the Midwest ISO/PJM footprint.<sup>4</sup> However, ComEd explains that in this filing it proposes a formula whereby all revenues received from all point-to-point transmission service and any replacement revenues received in lieu of charges for through and out transmission service, including revenues from a transition rate mechanism, e.g., a Seams Elimination Cost Adjustment (SECA), will be credited, on a monthly basis against the total transmission cost-of-service for determining ComEd's rates for network transmission service. ComEd also states that its filing provides cost-of-service support to justify any future ComEd filing in the event that the Commission in Docket No. EL03-212-000 orders ComEd to eliminate its through and out rate and also requires updated cost-of-service support for ComEd's zonal rates.

5. ComEd further states that this filing provides support for a new transmission revenue requirement for the ComEd pricing zone under the PJM OATT, once service over ComEd's transmission facilities becomes effective under the PJM OATT. It asserts that if the Commission requires cost-of-service support from ComEd for the proposed revenue neutral rates filed in the May 1, 2003 compliance filing submitted by ComEd in

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<sup>2</sup>ComEd requests waiver of the Commission's prior notice requirements to allow this effective date.

<sup>3</sup>Supra note 1; see also Alliance Companies, 100 FERC ¶ 61,137 (2002) (July Order).

<sup>4</sup>Midwest Independent Transmission System Operator, Inc., et al., 104 FERC ¶ 61,105 (2003) (MISO Order).

Docket No. ER03-262-000, the new ComEd transmission revenue requirement provides that support.

6. Specifically, ComEd proposes to increase its annual revenue requirement from \$169,800,000<sup>5</sup> to \$303,993,541 for its Phase I rates, resulting in a monthly network transmission rate of \$1.60/kW/mo., up from the current monthly network transmission rate of \$0.95/kW/mo. ComEd also proposes to increase its ancillary service Schedule 1 (Scheduling, System Control and Dispatch Service) rates. ComEd justifies the increase in rates because the last rate increase was based on a test year ending December 31, 1998, and substantial transmission upgrades have been made since then, resulting in a 34 percent increase in gross transmission plant and a corresponding 32 percent increase in expenses associated with gross transmission plant. In addition, ComEd proposes a 12.5 percent return on common equity (ROE) for Phase I rates. ComEd also proposes a revenue credit to be calculated each month, based on the actual use of ComEd's system by point-to-point transmission customers and on any replacement revenues in lieu of point-to-point transmission revenues that ComEd may receive should the Commission eliminate ComEd's through and out rates prior to PJM integration.

7. For Phase II, ComEd proposes a revenue requirement of \$311,558,424, which incorporates a start-up cost recovery as well as the ROE adder.

### **Notice, Interventions and Protests**

8. Notice of the filing was published in the Federal Register, 68 Fed. Reg. 56,283 (2003), with comments, protests and interventions due on or before October 3, 2003. The following parties filed timely, unopposed motions to intervene, comments and protests: Baltimore Gas and Electric Company (BGE), Consumers Energy Company (Consumers), Edison Mission Energy, Edison Mission Marketing & Trading, Inc., and Midwest Generation, EME, LLC (EME Companies), FirstEnergy Service Company (FirstEnergy), the Illinois Municipal Electric Agency, Illinois Cities, and the City of Naperville (Joint Illinois Parties), MidAmerican Energy Company (MidAmerican), Illinois Industrial Energy Consumers (IIEC), Madison Gas & Electric Company and Wisconsin Public Power Inc. (Wisconsin TDUs), PPL Electric Utilities Corporation and PPL EnergyPlus LLC (PPL), PSEG Companies (PSEG) and Wisconsin Electric Power Company (WEPCO) (collective, Intervenor). The Illinois Commerce Commission filed a notice of intervention. Michigan Public Power Agency and the Michigan South Central Power Agency filed an untimely motion to intervene.

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<sup>5</sup>This original revenue requirement was a result of a black box settlement filed on April 12, 2000 in Docket No. ER99-4470-001. These rates were set prior to ComEd's joining the PJM RTO.

9. Parties generally oppose ComEd's proposed rates challenging, among other things, capital structure, the inclusion of retail expenses in wholesale rates, distorted estimations of forecast data, the exclusion of savings program revenues in ComEd's capital structure, exaggerated Ancillary Service Schedule 1 revenue recoveries, and lack of cost-of-service support for Phase II rates. Parties also cite improper functionalization of accounts, incorrect estimation of demand, the improper revenue crediting mechanism proposal, improper customer audit provisions, and improper lost revenue recovery provisions. Parties also challenge the fact that ComEd filed for certain lost revenue recoveries in this proceeding that should be addressed in other currently pending and future proceedings.

10. ComEd filed an answer on October 20, 2003. Joint Illinois Parties filed a motion to strike ComEd's answer or, in the alternative, accept its answer to ComEd's answer on October 31, 2003. Also on October 31, 2003, EME Companies filed a motion to lodge requesting the Commission to consider, in this proceeding, its recently enunciated policy in Order No. 634<sup>6</sup> regarding inclusion of transition bonds and other non-recourse debt in a utility's proprietary capital ratio computation.

## **Discussion**

### **A. Procedural Matters**

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>7</sup> the notice of intervention and the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding. Given the early stage of this proceeding, the absence of any undue prejudice or delay, and their interest in this proceeding, we grant the untimely, unopposed motion to intervene of Michigan Public Power Agency and the Michigan South Central Power Agency.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>8</sup> prohibits an answer to protests or an answer to answer, unless otherwise ordered by the decisional authority. We will accept ComEd's and Joint Illinois Parties' answers because they have provided information that assisted us in our decision-making process.

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<sup>6</sup>Interim Rule, Order No. 634, 68 Fed. Reg. 40,500 (July 8, 2003), III FERC Stats. & Regs. ¶ 31,145 (June 26, 2003); Final Rule, Order No. 634-A, 68 Fed. Reg. 61,993 (Oct. 31, 2003), III FERC Stats. & Regs. ¶ 31,152 (Oct. 23, 2003).

<sup>7</sup>18 C.F.R. § 385.214 (2003).

<sup>8</sup>18 C.F.R. § 385.213(a)(2) (2003).

**B. Acceptance, Suspension and Evidentiary Hearing**

13. Our preliminary analysis of ComEd's proposed rates indicate that they have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, as discussed further below, we will accept them for filing, suspend them as discussed below, make them effective subject to refund, and set them for hearing. In West Texas Utilities Company, 18 FERC ¶ 61,189 (1982) (West Texas), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in West Texas, we would generally impose a five-month suspension. Here, our examination indicates that the proposed rates may yield substantially excessive revenues. Accordingly, we will accept the proposed Phase I rates for filing, suspend them for 5 months to become effective on April 12, 2004, subject to refund, and set them for hearing. For the Phase II rates, the Commission will accept the rates for filing, suspend them, subject to refund, to become effective the later of April 12, 2004, or the date ComEd is integrated into the PJM Market.

14. In order to provide the parties an opportunity to resolve these matters among themselves, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>9</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>10</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

15. We will make specific findings as to the following issues:

**1. Proposed Through and Out Rates and Lost Revenue Recovery**

16. ComEd proposes to include in its revenue requirement a stand alone through and out rate and lost revenue recovery method. ComEd alleges that this through and out rate and lost revenue recovery method is necessary because, if the Commission decides in any other proceeding to eliminate ComEd's current through and out rates for transactions

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<sup>9</sup>18 C.F.R. § 385.603 (2003).

<sup>10</sup>If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone a (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience. ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

sinking in the MISO/PJM footprint, it will lose approximately \$80 million in revenues. ComEd states that, to the extent that the Commission allows a transitional through and out rate and lost revenue recovery method in any other rate proceeding, ComEd will credit revenues collected (to be designated as replacement revenues) through that method to its customers. In the alternative, if the Commission determines to eliminate ComEd's through and out rates in any other rate proceeding, ComEd will collect only the point-to-point transmission service revenues and any replacement revenues (lost revenue recoveries, which will be credited to customers through its crediting mechanism) that the Commission determines are just and reasonable in that proceeding.<sup>11</sup>

17. Parties, on the other hand, are concerned that ComEd is attempting to recover lost revenues associated with the elimination of through and out rates, despite the fact that those issues are the subject of a separate, ongoing proceeding in Docket No. EL03-212-000.<sup>12</sup>

18. The issues of through and out rates and an associated lost revenue recovery method are pending in several other Commission proceedings.<sup>13</sup> Accordingly, ComEd's proposal, which we have suspended for five months and made effective subject to refund, will also be subject to our determinations in those proceedings.

## **2. 50 Basis Point Adder**

19. ComEd proposes a 50 basis point adder for Phase 2 rates. ComEd justifies this adder based on the Commission's decision to authorize a 50 basis point adder to utilities' ROE for those utilities that turn operational control of transmission facilities over to an RTO in Midwest Independent Transmission System Operator Inc., 100 FERC ¶ 61,292 at P 31 (2002) (Midwest ISO Order).<sup>14</sup>

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<sup>11</sup>See, e.g., ComEd's Answer at 16.

<sup>12</sup>Midwest Independent Transmission System Operator, Inc., et al., Docket Nos. EL02-111-000 and EL02-212-000, Order on Initial Decision, 68 Fed. Reg. 45,799 (Aug. 4, 2003), 104 FERC ¶ 61,105 (2003); see also Order Extending Date for Elimination of Midwest ISO & PJM Regional Through and Out Rates, 105 FERC ¶ 61,060 (2003), reh'g pending.

<sup>13</sup>See, e.g., Midwest Independent Transmission System Operator, Inc., et al., Docket Nos. EL02-111-000 and EL02-212-000, supra note 15; American Electric Power Service Corp., et al., Docket No. ER03-262-000 and ER03-263-000, supra note 1; and American Electric Power Service Corp., et al., Docket No. EL04-4-000, Regional SECA Proposal to Be Considered in Existing Commission-Initiated Section 206 Investigation, filed on October 14, 2003.

<sup>14</sup>See PJM Interconnection, LLC., 104 FERC ¶ 61,124 at P 74 (2003).

20. Parties contend that ComEd should not be granted a 50 basis point adder. They state that the Midwest ISO Order policy cannot be used to justify a 50 basis point adder in this proceeding because in the Midwest ISO Order the Commission was addressing a generic return on equity for all transmission-owning members of the Midwest ISO while in this case the Commission is looking at an individual transmission owner's ROE. At a minimum, parties request that ComEd's 50 basis point adder proposal must be made subject to the outcome of the Commission's policy statement in Docket No. PL03-1-000.<sup>15</sup>

21. ComEd argues that this adder is consistent with Commission policy, and as such, the Commission should summarily find that the 50 basis point adder is appropriate upon the integration of ComEd into PJM.

22. We find that ComEd's proposed 50 basis point adder is consistent with the Commission's Proposed Pricing Policy on acceptable ROE basis point increases to promote sound regional planning.<sup>16</sup> Accordingly, we will accept ComEd's proposed 50 basis point adder, subject to ComEd's integration into the PJM RTO, and subject to the outcome of the proceedings in Docket No. PL03-1-000.

### **3. Recovery of Start Up Costs**

23. In its filing, ComEd proposes to recover Alliance RTO start up costs totaling \$7,108,629. ComEd states that it joined the effort to develop the Alliance RTO on November 28, 2000, and that its pro-rata share of the Alliance RTO costs include:

(A) Internal Alliance RTO development costs incurred by ComEd totaling \$645,243. These costs include out-of-pocket costs such as travel and meals associated with participating in Alliance RTO working groups and the Alliance Participants Administrative and Start Up Activities Company, LLC (BridgeCo) support teams.

(B) ComEd's share of Alliance RTO development costs, totaling \$2,545,000, as paid through Dominion Virginia Power acting as the ARTO bank. ComEd states that these are costs that were incurred to develop and modify its systems, train personnel, and hire consultants or contractors to meet RTO requirements.

(C) ComEd's share of Alliance RTO development costs incurred by BridgeCo. ComEd states that BridgeCo was the company developed

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<sup>15</sup>Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid, Docket No. PL03-1-000, 102 FERC ¶ 61,032 (2003) (Proposed Pricing Policy).

<sup>16</sup>Id.

to design the information and technology systems necessary to bring the Alliance RTO operations into compliance with Order No. 2000. These costs total \$3,918,386.

24. ComEd also proposes to recover an additional \$1,134,269 of PJM start up costs. ComEd acknowledges that this amount is in addition to the \$10,730,903 of start up costs included for recovery in Docket No. ER03-262-000.<sup>17</sup> ComEd states that these additional costs cover new out-of-pocket costs associated with RTO working groups and meetings, development and modification of its transmission system, and training and hiring personnel in order to meet PJM requirements for integration. ComEd, therefore, is seeking a total of \$8,242,898 for the combined Alliance RTO and PJM RTO start up costs.

25. In its Phase II rates, ComEd proposes to amortize the PJM and Alliance RTO start up costs over a ten year period, to be recovered on a \$0.005/kW/mo. rate adder.<sup>18</sup> ComEd based the ten year amortization period on findings by the Commission and the Department of Energy.<sup>19</sup> ComEd asserts that when costs are incurred in periods different from an expected benefit period, as is the case with the RTO start up costs in this case, the costs should be amortized over the period in which the benefits are expected to be realized.<sup>20</sup>

26. Parties argue that ComEd has not described how the PJM RTO start up costs to be recovered in this proceeding differ from the start up cost recovery proposal pending in Docket No. ER03-262-000. According to parties, ComEd should not be permitted to amend the start up costs proposed in that docket in this proceeding. Parties also assert that ComEd has not offered any supporting documentation on these start up costs, and request that these costs be set for hearing. Finally, parties challenge ComEd's proposal to use a ten-year amortization period arguing that it is inappropriate in light of the

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<sup>17</sup>American Electric Power Service Corp. *et al.*, 103 FERC ¶ 61,008 (2003).

<sup>18</sup>Exhibit No. CWE-103 at 85-86.

<sup>19</sup>Report to Congress: Impacts of the Federal Energy Regulatory Commission's Proposal for Standard Market Design, U.S. Department of Energy (DOE) (April 30, 2003), and the Economic Assessment of RTO Policy, Commissioned by the FERC and prepared by ICF Consulting of Fairfax, VA (February 26, 2002).

<sup>20</sup>According to ComEd, a 20-year amortization period will cause excessive interest accrual, thereby increasing total cost recovery. In addition, the accuracy of the cost-benefit study decreases when a 20-year amortization period is used. Conversely, a five-year amortization period accelerates recovery and possibly offsets any savings.



Commission's and DOE's findings that benefits of RTO membership accrue over a 20-year period.<sup>21</sup>

27. We find that ComEd's use of a ten-year amortization period and proposed carrying charge for both Alliance and PJM start up costs are reasonable and in accordance with prior Commission findings.<sup>22</sup> Further, we will allow ComEd to defer recovery of the Alliance and PJM start up costs until such time as ComEd's integration with the PJM RTO commences, at which time depreciation of the 'asset' must commence, consistent with the treatment of other start up costs the Commission has accepted in similar orders.<sup>23</sup>

28. In addition, with regard to Alliance start up costs, we have previously stated that we intend to allow recovery of all costs prudently incurred in the establishment of the Alliance RTO.<sup>24</sup> We, therefore, will permit ComEd to recover its Alliance start up costs. However, we will require a breakdown of these costs to be filed during the hearing proceedings in this case in sufficient detail to allow the Commission to determine whether these costs are appropriate to recover as Alliance start up costs.

29. Except for our findings as noted above regarding ComEd's use of a ten-year amortization period and the deferral of recovery of the start up costs, we will set the PJM start up costs for hearing.

30. Finally, we find that ComEd has not clarified its accounting treatment of either the Alliance or the PJM start up costs, including whether they have been recorded under a regulatory debits account, consistent with prior orders, or whether they have been recorded under a regulatory asset account.<sup>25</sup> Therefore, we will set the appropriateness of accounting treatment of the Alliance and PJM start up cost for hearing in this proceeding.

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<sup>21</sup>Report to Congress, et al., supra note 23.

<sup>22</sup>PJM Interconnection, LLC., 93 FERC ¶ 61,056 (2000), in which the Commission allowed recovery of \$136 million in appropriately incurred start up costs inclusive of carrying charges. See also American Electric Power Service Corporation, 104 FERC ¶ 61,013 at P 26 (2003).

<sup>23</sup>See, e.g., Duke Energy Corporation, 94 FERC ¶ 61,080 (2001), in which the Commission allowed amortization to begin upon realization of the benefits associated with the costs.

<sup>24</sup>Alliance Companies, et al., 99 FERC ¶ 61,105 at 61,442 (2002). Ameren Services Co., et al., 101 FERC ¶ 61,320 at 62,337 (2003).

<sup>25</sup>Id.

#### **4. Coincident Peak Methodology**

31. ComEd proposes to continue to use its current 12 CP methodology for calculating network transmission charges for Phase I, and shift to a 1 CP methodology for Phase II, consistent with the PJM methodology for calculating fixed transmission rights (FTRs).<sup>26</sup>

32. Parties point out that it is unclear from ComEd's rate filing whether it plans to use a 1 CP methodology once it integrates into PJM, and state that ComEd must provide this clarification in this rate proceeding. According to parties, ComEd must also justify why it is not appropriate for it to utilize PJM's 1 CP methodology in Phase I as well as in Phase II.

33. We note that we have allowed utilities in other proceedings to retain their original CP methodology until the time of integration with PJM.<sup>27</sup> We note, further, that ComEd is adhering to the Commission's direction established in Allegheny, with its proposal to apply a 1 CP methodology for both its network charges and FTR allocation for Phase II rates. Accordingly, ComEd's CP methodologies for both Phase I and Phase II are accepted.

#### **5. Recovery of FERC Annual Charges**

34. ComEd states that, with respect to FERC annual charges, it currently bills customers only after it has received the actual bill for a year from the Commission.<sup>28</sup> As a result, therefore, in any year, ComEd is billing customers for FERC annual charges based on transmission system usage in the prior year. ComEd now proposes to continue to use the same method to recover FERC annual charges for the prior year after ComEd becomes a member of PJM, only to the extent that the Commission bills ComEd for annual charges for time periods prior to Phase II.

35. Parties argue that ComEd's imposition of FERC annual charges in Phase II is retroactive rate making, citing the Commission's prohibition against retroactive ratemaking in the April 1 Order.

36. We find that ComEd's proposed recovery of annual charges in Phase II is not retroactive ratemaking because ComEd is billing the annual charges when they are billed by the Commission which may occur in Phase II. We note, further, that ComEd's

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<sup>26</sup>PJM Interconnection, LLC., and Allegheny Power, 96 FERC ¶ 61,060 (2001) at 61,221 (Allegheny).

<sup>27</sup>Id.

<sup>28</sup>Commonwealth Edison Company of Indiana, FERC Electric Tariff Second Revised Vol. No. 5, First Revised Sheet No. 215.

proposal to pass through FERC annual charges in Phase II is consistent with Order No. 641.<sup>29</sup>

**6. Proposed Changes to ComEd's Rates In Phase II Under the PJM Tariff**

37. ComEd states that, upon Commission approval of its Phase II rates in this proceeding, it will provide those rates to PJM and PJM will then submit the revised relevant tariff sheets under PJM's OATT to the Commission.

38. Parties argue that, in addition to changing its revenue requirements for Phase II rates in this Section 205 proceeding, ComEd is also attempting to change the design of the PJM zonal rates under the PJM OATT without going through the stakeholder process required under the PJM West Transmission Owners' Agreement (West TOA). Parties argue that ComEd's proposed zonal rates may only be established in accordance with the West TOA, which requires approval by a vote of the PJM Transmission Owners' Administrative Committee. Parties request, therefore, that the Commission reject ComEd's proposed zonal rates in the absence of the requisite authorizations and stakeholder process.

39. We find that, at the time ComEd filed its proposed rates on September 12, 2003 in this proceeding, Section 2.2 of the West TOA specifically allowed ComEd to make a unilateral filing to change its revenue requirement, and further, allowed ComEd to change its zonal rates as well.<sup>30</sup> Since Section 2.2 of the West TOA authorizes these rate changes, we will reject arguments that ComEd cannot do so in this Section 205 rate proceeding.

**C. Request for Waivers**

**1. Waiver of Section 35.13 of the Commission's Regulations**

40. ComEd requests waiver of Section 35.13 of the Commission's regulations, 18 C.F.R. § 35.13 (2003), to permit ComEd to submit Period II test year data using six months of actual data and six months of forecasted data for the calendar year 2003 as made in this filing. Parties oppose ComEd's waiver request, claiming that ComEd did not justify its request. ComEd's filing substantially complies with the threshold filing requirements of Section 35.13 of the Commission's regulations. Accordingly, we grant ComEd's requested waiver of Section 35.13.

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<sup>29</sup>Revision of Annual Charges Assessed to Public Utilities, Order No. 641, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,109 (2000).

<sup>30</sup>See West TOA, Section 2.2.5.

## **2. Waiver of Section 2.18 of the Commission's Regulations**

41. ComEd requests waiver of Section 2.18 of the Commission's regulations, 18 C.F.R. § 2.18 (2003), to allow a two stage rate increase, arguing that the Commission has previously allowed such a phased rate increase in similar circumstances.<sup>31</sup> Parties argue that the Commission should not grant ComEd's request for waiver of the phased rate increase since ComEd gives no plausible justification, and since it is questionable when the Phase II rates may go into effect, if at all. We agree with ComEd. ComEd is in the unique circumstance of being in a transition period leading to its integration with the PJM RTO. The two phases of ComEd's rate proposal include distinct rate design cost recovery mechanisms (*i.e.*, start up costs) that reflect ComEd's transition to RTO membership. Accordingly, consistent with AEP, we will grant ComEd's requested waiver given its transition to RTO membership.

## **3. Waiver of Section 35.17 of the Commission's Regulations**

42. ComEd requests waiver of Section 35.17(b) of the Commission's regulations, 18 C.F.R. § 35.17(b) (2003), which prohibits utilities from filing revisions to rates that are currently under suspension. ComEd points out that when the Commission accepted ComEd's revenue requirement rates as filed in Docket No. ER03-262-000 on April 1, 2003, it suspended those rates for a nominal period to become effective upon transfer of functional control over ComEd's facilities to PJM.

43. Parties assert that ComEd has not justified its request that the Commission waive Section 35.17, in light of the Commission's suspension of ComEd's current revenue requirement filed in Docket No. ER03-262-000.<sup>32</sup> According to the Parties, ComEd cannot now be permitted to file rates reflecting a significant increase in the revenue requirement that were set for hearing in Docket No. ER03-262-000 and that are currently the subject of settlement proceedings in that docket. According to the Parties, ComEd's rate filing in this docket should be rejected, because it is the type of "moving target" the Section 35.17 of the Commission's regulations is designed to prevent.

44. The Section 35.17(b) waiver provision addresses situations where a utility has filed rates that have been accepted and suspended for more than a nominal period, *e.g.*, suspended for five months, and then attempts to file additional rates during that suspension period. This is not the situation here. Accordingly, Section 35.17(b) does not apply and we reject ComEd's waiver request.

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<sup>31</sup>See American Electric Power Service Corp., 103 FERC ¶ 61,009 at P 42 (2003) (AEP).

<sup>32</sup>April Order, 103 FERC ¶ 61,008 at P 1 (2003).

**D. Request for Consolidation**

45. We note that ComEd requests the Commission to consolidate this rate filing with the ongoing proceeding relating to ComEd's integration into the PJM transmission system in Docket No. ER03-262-000. ComEd argues that: (1) the instant filing uses an updated cost-of-service and revenue requirement that will impact the issues set for hearing in Docket No. ER03-262-000; (2) there are a number of issues common to the two dockets; and (3) administrative efficiency warrants consolidation.

46. Parties argue against consolidation given the complex issues involved in Docket ER03-262-000, and the late stage of that proceeding. According to Parties, consolidation will complicate and delay these proceedings.

47. We will deny ComEd's request for consolidation.<sup>33</sup> We note that settlement proceedings have already begun in Docket No. ER03-262-000, and that the issues involve PJM's RTO Open Access Transmission Tariff (OATT). Under these circumstances, we will not grant the requested consolidation.

**The Commission orders:**

(A) ComEd's proposed Phase I rates are hereby conditionally accepted for filing, suspended for five months, to become effective April 12, 2004, subject to refund and set for hearing. ComEd's proposed Phase II rates are hereby conditionally accepted for filing, and suspended to become effective the later of April 12, 2004, or the date when ComEd is integrated into the PJM Market, subject to refund and set for hearing, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of ComEd's proposed tariff revisions. As discussed in the body of this order, the hearing will be held in abeyance to give the parties time to conduct settlement judge negotiations.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby authorized to

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<sup>33</sup>The parties may renew this request with the Chief Administrative Law Judge should circumstances change. See 18 C.F.R. § 385.503 (2003). Likewise, to the extent that individual issues raised here become more appropriately resolved elsewhere, the parties may petition the Chief Judge to consolidate such issues for hearing and decisions.

appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If the settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.